VALIDITY OF ASSIGNMENTS OF UNEARNED WAGES.—Since the law will not enforce the assignment of a future right if it be not coupled with an interest,[1] the jurisdiction of equity over the assignment of contingencies and mere possibilities is exclusive. The strict application of these principles would limit a legal assignment to wages arising from a definite existing contract of employment,[2] since an interest cannot logically be said to exist in favor of the wage-earner where there is not at least a contract. Nevertheless, the weight of authority permits the assignment of future wages at law even though the employment be terminable by either party without notice, provided the assignor be employed in some position at the time the assignment is made, and remain in the same employment as long as the assignment lasts.[3] It would seem, however, that the average wage-earner has not a sufficient interest to couple with his possibility to enable him to make a valid long term assignment at law, since an employee cannot be said to have a property right in a possible continuing offer of his employer.

On the other hand, a mere future possibility of earning wages is assignable in equity,[4] provided the assignor has some employment reasonably in contemplation at the time of making the assignment.[5] Such equitable assignment operates as an executory contract, which gives a lien upon the *res* when it comes into existence,[6] that is, as soon as the wages are earned. Consequently, the rights of subsequent execution creditors attaching before the wages have been earned are superior to those of an equitable assignee of wages,[7] while the same creditors would not prevail against a legal assignee,[8] since the latter has a vested right in the wages by virtue of the assignment itself, provided the debtor has been duly notified so as to cut off equities. Similarly, where the assignor of future wages becomes bankrupt before he has earned them, some courts, in construing § 67 (d) of the Bankruptcy Act,[9] hold that the assignee's right to the unearned wages survives the discharge,[10] while others consider it barred.[11] The con-

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[1]Mulhall *v.* Quinn (1854) 67 Mass. 105; see Edwards *v.* Peterson (1888) 80 Me. 367.

[2]Steinbach *v.* Brant (1900) 79 Minn. 383; O'Keefe *v.* Allen (1898) 20 R. I. 414.

[3]Boylen *v.* Leonard (1861) 84 Mass. 407; Kane *v.* Clough (1877) 36 Mich. 436. So wages may be assigned for long periods in the future where the employment is from day to day, Garland *v.* Harrington (1871) 51 N. H. 409, or by the piece. Hartley *v.* Tapley (1854) 68 Mass. 565. In some jurisdictions such assignments are allowed only in equity. See Brewer *v.* Griesheimer (1902) 104 Ill. App. 323; Hax *v.* Acme Plaster Co. (1900) 82 Mo. App. 447.

[4]Edwards *v.* Peterson, *supra.*

[5]Cooper *v.* Douglass (N. Y. 1864) 44 Barb. 409.

[6]1 Jones, Liens (2nd ed.) § 42; see Close *v.* Gravel Co. (1911) 156 Mo. App. 411.

[7]Purcell *v.* Mather (1860) 35 Ala. 570; Cooper *v.* Douglass, *supra.*

[8]Thayer *v.* Kelly (1855) 28 Vt. 19.

[9]Bankruptcy Act (1898) § 67d. "Liens given or accepted in good faith * * * and for a present consideration, * * * shall * * * not be affected by this Act."

[10]Citizens Loan Assn. *v.* Boston & Maine R. R. (1907) 196 Mass. 528; Mallin *v.* Wenham (1904) 209 Ill. 252.

[11]*In re* West (D. C. 1904) 128 Fed. 205; *In re* Home Discount Co. (D. C. 1906) 147 Fed. 538; Leitch *v.* Northern Pac. Ry. (1905) 95 Minn. 35.

fusion on this point would seem to result from the failure to distinguish between the effects of a legal and an equitable assignment. A legal assignment under a present contract vests in the assignee of unearned wages a lien which will survive the discharge, while an equitable assignment, operating as an executory contract, gives no lien or property right in the wages until they are earned,[12] with the result that there is nothing existent to survive.

Where the assignor is a public officer the fear that such individual would not put forth his best efforts for the sovereign has caused the overwhelming weight of authority to hold void an assignment by him of his unearned wages.[13] The necessity of an employee rendering faithful service to his employer, on the other hand, has not been considered of great enough importance to deny to the wage-earner, on grounds of public policy, the right to dispose of his future remuneration as he may see fit.[14] The distinction between legal and equitable assignments should, however, be strictly observed, so that the right to assign unearned wages at law ought properly to be restricted to wages accruing under a present contract. Accordingly, the recent case of *Heller* v. *Lutz* (Mo. 1914) 164 S. W. 123, in intimating that there can be no assignment at law in absence of a definite contract to employ,[15] states the logical rule.

This holding was not, however, essential to the decision of the case, because of the state statute making null and void the assignment of all wages, salaries, and earnings not earned at the date of the assignment. The court, in upholding the constitutionality of this enactment, is in line with the weight of recent authority. It is true that a similar statute in Illinois was held unconstitutional as being subversive of the liberty to contract, but the majority of the court in that case suggest that the result would have been different had the enactment been limited in its application to wage-earners, basing their decision on the ground that the broad scope of the statute might lead to absurd consequences in extending its protection to the earners of large salaries.[16] Since this decision, the Supreme Court of the United States[17] and various state courts have upheld other statutes either regulating,[18] or denying entirely,[19] the right to assign future wages. The undoubted wisdom of this form of legislation in protecting the ignorant wage-earner against those who are but too willing to take advantage of his weaknesses and needs, and in depriving him of the

[12] *In re* West, *supra.*

[13] Bliss *v.* Lawrence (1874) 58 N. Y. 442; *contra,* State *v.* Hastings (1862) 15 Wis. *75; *cf.* Credit Co. *v.* Townsend (1908) 132 Mo. App. 390. An officer may assign wages already due. Roesch *v.* W. B. Worthen Co. (1910) 95 Ark. 482.

[14] Mallin *v.* Wenham, *supra;* but see Lehigh Valley R. R. *v.* Woodring (1887) 116 Pa. 513.

[15] Walker, J., says at p. 125: "A present employment will not justify the presumption that it is of any definite duration or that there is a contract in regard to the same."

[16] Massie *v.* Cessna (1909) 239 Ill. 352.

[17] Mutual Loan Co. *v.* Martell (1911) 222 U. S. 225.

[18] Mutual Loan Co. *v.* Martell (1909) 200 Mass. 482; Thompson *v.* Erie R. R. (1912) 207 N. Y. 171.

[19] International Text Book Co. *v.* Weissinger (1902) 160 Ind. 349.

privilege of becoming a virual slave in the hands of his assignee, clearly outweighs the loss of the laborer's somewhat unsubstantial liberty to contract.

MATERIALMAN'S LIEN RECORDED AFTER ADJUDICATION IN BANKRUPTCY UNDER AMENDMENT OF 1910.—Prior to the amendment of 1910 it was the general rule in bankruptcy law that the trustee acquired only the interest and title of the bankrupt.[1] Accordingly, since under most of the recording acts the bankrupt's failure to record a chattel mortgage or the neglect by the vendor to file a contract of conditional sale did not render the transaction void as between the original parties, but merely postponed their rights to superior claims, it was valid as against the trustee.[2]

The amendment of 1910 to § 47a(2) was obviously enacted to remedy the situation created by the decision in *York Manufacturing Co.* v. *Cassell.*[3] This amendment, as to all property in the custody of the court, gives the trustee all the rights of a lien creditor, and as to other property the rights of a judgment creditor with execution returned unsatisfied.[4] It has been held, consequently, that a mortgage which has not been recorded by the bankrupt is invalid against the trustee,[5] and the same is true of a contract of conditional sale which has not been filed by the vendor.[6] But even under the amendment it cannot be said that the trustee in every case will prevail against parties asserting such claims unless the law of the State where the case arises vests the creditor with a superior equity,[7] and this evidently must

[1]3 Remington, Bankruptcy, 283; see Atchison, T. & S. F. Ry. *v.* Hurley (C. C. A. 1907) 153 Fed. 503, affirmed (1909) 213 U. S. 126. There is some authority, however, for the proposition that the filing of a petition in bankruptcy is in effect an attachment on the bankrupt's property. See Mueller *v.* Nugent (1902) 184 U. S. 1. An exception to the rule, of course, is where special provisions in the Act expressly give the trustee better rights. The provision in § 70e, for example, gives the trustee the right to avoid any transfer, such as a preference or unrecorded mortgage, which any creditor could have avoided. See Fourth St. Nat. Bank *v.* Millbourne Mills (C. C. A. 1909) 172 Fed. 177.

[2]Crucible Steel Co. *v.* Holt (C. C. A. 1909) 174 Fed. 127 (Chattel mortgage); Hewit *v.* Berlin Machine Works (1904) 194 U. S. 296; *In re* Great Western Mfg. Co. (C. C. A. 1907) 152 Fed. 123; but see Chesapeake Shoe Co. *v.* Seldner (C. C. A. 1903) 122 Fed. 593, which proceeds on the theory that the trustee represents the creditors, who, from the date of the filing of the petition in bankruptcy, are in effect attaching creditors. (Conditional sales.)

[3](1906) 201 U. S. 344. This decision crystallized the doctrine that, where as between the original parties a transaction was valid, the trustee was vested with no better rights than the bankrupt.

[4]Bankruptcy Act, § 47a(2), as amended 1910; Black, Bankruptcy, 819.

[5]*In re* Hammond (D. C. 1911) 188 Fed. 1020; see 13 Columbia Law Rev. 539.

[6]*In re* Bazemore (D. C. 1911) 189 Fed. 236; *In re* Williamsburg Knitting Mill (D. C. 1911) 190 Fed. 871.

[7]This was an acknowledged principle even before the passage of the amendment of 1910. See Chesapeake Shoe Co. *v.* Seldner, *supra; In re* Burke (D. C. 1909) 168 Fed. 994.